PART IV

Section 1-B

CENTRAL ACTS AND ORDINANCES

NOTIFICATION.

(LAW DEPARTMENT).

No. LAW 45 LCA 65, dated Bangalore, the 5th May 1965.

Ordered that the Income-tax (Amendment) Act, 1965 (Central Act 1 of 1965), which has been published in the *Gazette of India*, Extraordinary, Part II, Section 1, dated the 15th March 1965, be republished in the *Mysore Gazette*, for general information.

By Order and in the name of the Governor of Mysore,

H. K. ANANTHASUBBA RAO,
Under Secy. to Govt., L. D.

GOVERNMENT OF INDIA.

MINISTRY OF LAW

(Legislative Department)

New Delhi, the 15th March, 1965/*Phalguna* 24, 1886 (*Saka*)

The following Act of Parliament received the assent of the President on the 12th March, 1965, and is hereby published for general information :—

THE INCOME-TAX (AMENDMENT) ACT, 1965
No. 1 OF 1965

[*12th March*, 1965]

An Act further to amend the Income-tax Act, 1961 and to validate certain searches under that Act.

BE it enacted by Parliament in the Sixteenth Year of the Republic of India as follows :—

1. Short title.—This Act may be called the Income-tax (Amendment) Act, 1965.

2. Substitution of new sections for section 132.—For section 132 of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the principal Act), the following sections shall be substituted, namely :—

'**132. Search and seizure.**—(1) Where the Director of Inspection or the Commissioner, in consequence of information in his possession, has reason to believe that—

(*a*) any person to whom a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922 (11 of 1922) or under sub-section (1) of section 131 of this Act, or a notice under sub-section(4) of section '2 of the Indian Income-tax Act, 1922 or under sub-section (1) of section 142 of this Act was issued to produce, or

cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents as required by such summons or notice, or

(*b*) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (11 of 1922) or under this Act, or

(*c*) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been disclosed for the purposes of the Indian Income-tax Act, 1922 (11 of 1922) or this Act (hereinafter in this section referred to as the undisclosed income or property),

he may authorise any Deputy Director of Inspection, Inspecting Assistant Commissioner, Assistant Director of Inspection or Income-tax Officer (hereinafter referred to as the authorised officer) to—

(*i*) enter and search any building or place where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;

(*ii*) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (*i*) where the keys thereof are not available,

(*iii*) seize any such books of account, other documents, money, bullion, jewellery or other

valuable article or thing found as a result of such search ;

(*iv*) place marks of identification on any books of account or other documents are make or cause to be made extracts or copies therefrom ;

(*v*) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.

(2) The authorised officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (1) and it shall be the duty of every such officer to comply with such requisition.

(3) The authorised officer may, where it is not practicable to seize any such book of account, other document, money, bullion, jewellery or other valuable article or thing, serve an order on the owner or the person who is in immediate possesssion or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in posession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922) or under this Act.

(5) Where any money, bullion, jewellery or other valuable article or thing (hereinafter in this section 132A referred to as the assets) is seized under sub-section (1), the Income-tax Officer, after affording a reasonable opportunity to the person concerned for being heard and making such inquiry as may be prescribed, shall, within

ninety days of the seizure, make an order, with the previous approval of the Commissioner,—

(*i*) estimating the undisclosed income (including the income from the undisclosed property) in a summary manner to the best of his judgment on the basis of such materials as are available with him;

(*ii*) calculating the amount of tax on the income so estimated in accordance with the provisions of the Indian Income-tax Act, 1922 (11 of 1922), or this Act;

(*iii*) specifying the amount that will be required to satisfy any existing liability under this Act and any one or more of the Acts specified in clause (*a*) of sub-section (1) of section 230A in respect of which such person is in default or is deemed to be in default,

and retain in his custody such assets or part thereof as are in his opinion sufficient to satisfy the aggregate of the amounts referred to in clauses (*ii*) and (*iii*) and forthwith release the remaining portion, if any, of the assets to the person from whose custody they were seized.

Provided that if, after taking into account the materials available with him, the Income-tax Officer is of the view that it is not possible to ascertain to which particular previous year or years, such income or any part thereof relates, he may calculate the tax on such income or part, as the case may be, as if such income or part were the total income chargeable to tax at the rates in force in the financial year in which the assets were seized.

Provided further that where a person has paid or made satisfactory arrangements for payment of all the amounts referred to in clauses (*ii*) and (*iii*) or any part thereof, the Income-tax Officer may, with the previous approval of the Commissioner, release the assets or such part thereof as he may deem fit in the circumstances of the case.

(6) The assets retained under sub-section (5) may be dealt with in accordance with the provisions of section 132A.

(7) If the Income-tax Officer is satisfied that the seized assets or any part thereof were held by such person for or on behalf of any other person, the Income-tax Officer, may proceed under sub section (5) against such other person and all the provisions of this section shall apply accordingly.

(8) The books of account or other documents seized under sub-section (1) shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Commissioner for such retention is obtained;

Provided that the Commissioner shall not authorise the retention of the books of account and other documents for a period exceeding thirty days after all the proceedings under the Indian Income-tax Act, 1922 (11 of 1922) or this Act in respect of the years for which the books of account or other documents are relevant are completed.

(9) The person from whose custody any books of account or other documents are seized under sub-section (1) may make copies thereof or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf, at such place and time as the authorised officer may appoint in this behalf.

(10) If a person legally entitled to the books of account or other documents seized under sub-section (1) objects for any reason to the approval given by the Commissioner under sub section (8), he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents.

(11) If any person objects for any reason to an order made under sub-section (5), he may, within thirty days of the date of such order, make an application to such

authority, as may be notified in this behalf by the Central Government in the Official Gazette (hereinafter in this section referred to as the notified authority), stating therein the reasons for such objection and requesting for appropriate relief in the matter.

(12) On receipt of the application under sub-section (10) the Board, or on receipt of the application under sub-section (11) the notified authority, may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit.

(13) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898) relating to searches and seizure shall apply, so far as may be, to searches and seizure under sub-section (1).

(14) The Board may make rules in relation to any search or seizure under this section; in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer—

(i) for obtaining ingress into such building or place to be searched where free ingress thereto is not available;

(ii) for ensuring safe custody of any books of account or other documents or assets seized.

Explanation 1.—In computing the period of ninety days for the purposes of sub-section (5), any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

Explanation 2.—In this section, the word "proceeding" means any proceeding in respect of any year, whether under the Indian Income-tax Act, 1922 (11 of 1922) or this Act, which may be pending on the date on which a search is authorised under this section or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.

132A. Application of retained assets.—(1) The assets retained under sub-section (5) of section 132 may be dealt with in the following manner, namely:—

(i) The amount of the existing liability referred to in clause (iii) of the said sub-section and the amount of the liability determined on completion of the regular assessment or re-assessment for all the assessment years relevant to the previous years to which the income referred to in clause (i) of that sub-section relates, and in respect of which he is in default or is deemed to be in default may be recovered out of such assets.

(ii) If the assets consist solely of money, or partly of money and partly of other assets, the Income-tax Officer may apply such money in the discharge of the liabilities referred to in clause (i) and the assessee shall be discharged of such liability to the extent of the money so applied.

(iii) The assets other than money may also be applied for the discharge of any such liability referred to in clause (i) as remains undischarged and for this purpose such assets shall be deemed to be under distraint as if such distraint was effected by the Income-tax Officer under authorisation from the Commissioner under sub-section (5) of section 226 and the Income-tax Officer may recover the amount of such liabilities by the sale of such assets and such sale shall be effected in the manner laid down in the Third Schedule.

(2) Nothing contained in sub-section (1) shall preclude the recovery of the amount of liabilities aforesaid by any other mode laid down in this Act.

(3) Any assets or proceeds thereof which remain after the liabilities referred to in clause (i) of sub-section

(1) are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

(4) (a) The Central Government shall pay simple interest at the rate of six per cent. per annum on the amount by which the aggregate of mony retained under section 132 and of the proceeds, if any, of the assets sold towards the discharged of the existing liability referred to in clause (iii) of sub-section (5) of that section exceeds the aggregate of the amounts required to meet the liabilities referred to in clause (i) of sub-section (1) of this section.

(b) Such interest shall run from the date immediatly following the expiry of the period of six months from the date of the order under sub-section (5) of section 132 to the date of the regular assessment or reassesssment referred to in clause (*i*) of sub-section (*1*) or, as the case may be, to the date of last of such assessments or reassessments.'.

3. Amendment of Section 271.—In section 271 of the principal Act, after sub-section (4), the following sub-sections shall be inserted, namely :—

"(*4A*) Notwithstanding anything contained in clause (*i*) or clause (*iii*) of sub-section (1) the Commissioner may, in his discretion—

(*i*) reduce or waive the amount of minimum penalty imposable on a person under clause (*i*) of sub-section (1) for failure, without reasonable cause, to furnish the return of total income which such person was required to furnish under sub-section (1) of section 139, or

(*ii*) reduce or waive the amount of minimum penalty imposable on a person under clause (*iii*) of sub-section (1),

if he is satisfied that such person—

(*a*) in the case referred to in clause (*i*) of this sub-section has, prior to the issue of notice to him under sub-section (*2*) of section 139, voluntarily and in good faith, made full disclosure of his income ; and in the case referred

to in clause (*ii*) of this sub-section has, prior to the detection by the Income-tax Officer, of the concealment of particulars of Income in respect of which the penalty is imposable, or of the inaccuracy of particulars furnished in respect of such income, voluntarily and in good faith, made full and true disclosure of such particulars;

(*b*) has co-operated in any enquiry relating to the assessment of such income; and

(*c*) has either paid or made satisfactory arrangements for payment of any tax or interest payable in consequence of an order passed under this Act in respect of the relevant assessment year:

Provided that if in a case the minimum penalty imposable under clause (*i*) or, as the case may be, clause (*iii*) of sub-section (1) in respect of the relevant assessment year, or where such disclosure relates to more than one assessment year, the aggregate of the minimum penalty imposable in respect of those years, exceeds a sum of rupees fifty thousand, no order reducing or waiving the penalty shall be made by the Commissioner unless the previous approval of the Board has been obtained.

(4B) An order under sub-section (4A) shall be final and shall not be called in question before any court of law or any other authority"

4. Insertion of new section 275A.—In Chapter XXII of the principal Act, before section 276, the following section shall be inserted, namely:—

"**275A. Contravention of order made under sub-section (3) of section 132.**—Whoever contravenes any order referred to in sub-section (3) of section 132 shall be punishable with rigorous imprisonment which may extend to two years and shall also be liable to fine."

5. Amendment of section 279.—In section 279 of the principal Act,—

(*i*) in sub-section (1), after the words "offence under," the words, figures and letter "section 275A or" shall be inserted;

(*ii*) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1*A*) A person shall not be proceeded against for an offence under section 277 in relation to the assessment for an assessment year in respect of which the penalty imposable upon him under clause (*iii*) of sub-section (1) of section 271 has been reduced or waived by an order under sub-section (4A) of that section.";

(*iii*) after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) Where any proceeding has been taken against any person under sub-section (1), any statement made or account or other document produced by such person before any of the Income-tax authorities specified in clauses (*a*), (*b*), (*c*), (*d*) and (*e*) of section 116 shall not be inadmissible as evidence for the purpose of such proceedings merely on the ground that such statement was made or such account or other document was produced in the belief that the penalty imposable would be reduced or waived under sub-section (*4A*) of section 271 or that the offence in respect of which such proceeding was taken would be compounded.".

6. Validation of certain searches made.—Any search of a building or place by an Inspecting Assistant Commissioner or Income-tax Officer purported to have been made in pursuance of sub-section (1) of section 132 of the principal Act before the commencement of this Act shall be deemed to have been made in accordance with the provisions of that sub-section as amended by this Act as if those

provisions were in force on the day the search was made and shall not be called in question before any court of law or any other authority merely on the ground—

(*i*) that the Inspecting Assistant Commissioner or the Income-tax Officer made such search with the assistance of any other person ; or

(*ii*) that no proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or the principal Act was pending against the person concerned when the search was authorised under the said sub-section.

7. Repeal and saving.—(1) The Income-tax (Amendment) Ordinance, 1965 (1 of 1965) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act as if this Act had commenced on the 6th day of January, 1965.

R. C. S. SARKAR,
Secretary to the Government of India.

Printed by the Director of Printing, Sty. & Publications at the Govt. Press, B'lore.